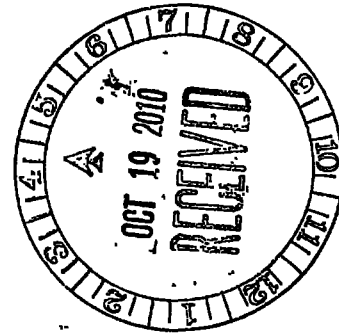


228014

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL



STB FINANCE DOCKET NO. 35438

EIGHTEEN THIRTY GROUP, LLC
—ACQUISITION EXEMPTION—
LINE OF RAILROAD IN ALLEGANY COUNTY, MD

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31

ORIGINAL

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Counsel for Petitioner

Office of Proceedings
OCT 20 2010
Part of
Public Record

FEE RECEIVED

OCT 19 2010

**SURFACE
TRANSPORTATION BOARD**

Dated: October 19, 2010

FILED
OCT 19 2010
**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35438



**EIGHTEEN THIRTY GROUP, LLC
—ACQUISITION EXEMPTION—
LINE OF RAILROAD IN ALLEGANY COUNTY, MD**

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31

Eighteen Thirty Group, LLC (“Eighteen Thirty”), a Maryland limited liability company and noncarrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the “Board”) to permit Eighteen Thirty to acquire about 8.54 miles of railroad line between Morrison, MD, milepost BAI 27.0, and Carlos, MD at the end of the line, milepost BAI 18.46, all in Allegany County, MD (the “Line”). Eighteen Thirty is seeking to acquire the Line as a result of the Bankruptcy of James Riffin through an agreement with Mark J. Friedman, Chapter 7 Trustee of the Bankruptcy Estate of James Riffin (the “Trustee”). The agreement and acquisition through the agreement are subject to approval by the bankruptcy court. Eighteen Thirty is filing the Notice of Exemption seeking a permissive exemption to acquire the Line

in the event the bankruptcy court approves the agreement between Eighteen Thirty and the Trustee.

INFORMATION REQUIRED BY 49 CFR 1150.33

<u>Name and Address of Applicant</u>	49 CFR 1150.33(a)
Eighteen Thirty Group, LLC 10706 Beaver Dam Road Cockeysville, MD 21030-2207	

<u>Applicant's Representative</u>	49 CFR 1150.33(b)
John D. Heffner John D. Heffner, PLLC 1750 K Street, N.W. Suite 200 Washington, D.C. 20006 (202) 296-3333	

<u>Statement of Agreement</u>	49 CFR 1150.33(c)
-------------------------------	--------------------------

Eighteen Thirty has executed an agreement with the Trustee for Eighteen Thirty to acquire the Line, subject to approval of the agreement by the bankruptcy court.

<u>Operator of the Property</u>	49 CFR 1150.33(d)
---------------------------------	--------------------------

Eighteen Thirty Group will contract out the common carrier operations over the Line to its corporate affiliate, Georges Creek Railway, LLC ("Georges Creek"), a Maryland limited liability company.

Eighteen Thirty is a newly established Maryland limited liability company organized by Duncan Smith and Gerald Altizer for the purpose of owning and operating railroad lines including the Line. Eighteen Thirty intends to acquire the Line and for its affiliate, Georges Creek, to operate the Line as a common carrier. The Line has been the subject of previous litigation before the Board.

CSX Transportation, Inc. (“CSXT”) originally obtained authority to abandon the Line. *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 25, 2005).

Acquisition of the Line under the Board’s offer of financial assistance provisions was authorized in *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD. In the Matter of an Offer of Financial Assistance*, STB Docket No. AB-55 (Sub-No. 659X) (STB served December 14, 2005). Mr. Altizer was a principal in that group. James Riffin was authorized as a corporate affiliate to substitute as the acquiring entity under the offer of financial assistance provisions. *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD, In the Matter of an Offer of Financial Assistance*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006) (the “*Substitution Decision*”).

After the *Substitution Decision*: (1) Gerald Altizer severed his business relationship with Riffin and obtained new financing to acquire the Line from his

new business partner, Duncan Smith; (2) Mr. Riffin did not restore the Line to active service and eventually filed for personal bankruptcy under Chapter 7 of the United States Bankruptcy Code; (3) Mssrs. Smith and Altizer established Eighteen Thirty to pursue acquisition of the Line; and (4) Georges Creek has been actively engaged in soliciting customers to use the Line once it is restored to service. Most recently, Eighteen Thirty executed an agreement with the Trustee for purchase of the Line. Once that agreement is approved by the Bankruptcy Court and this exemption takes effect, Eighteen Thirty will acquire the Line and Georges Creek will resume common carrier rail service over the Line.

Other information required

(1) The name and address of the railroad transferring the subject property:

In the *Substitution Decision*, the Board authorized James Riffin to acquire and operate the Line under the offer of financial assistance provisions. To the best of Eighteen Thirty's knowledge, Mr. Riffin's address is 1941 Greenspring Drive, Timonium, MD 21093. The trustee asserts the bankruptcy estate is the owner of the equitable interest in the Line and that the trustee has the power to dispose of the Line subject to approval from the bankruptcy court. The Trustee is Mark J. Friedman, 6225 Smith Avenue, Baltimore, Maryland 21209.

(2) The proposed time schedule for consummation of the transaction:

Eighteen Thirty intends to consummate this transaction once the bankruptcy court approves its purchase agreement, at least 30 days from the filing date of this notice.¹

(3) The mileposts of the subject property, including any branch lines:

The line extends between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD.

(4) The total route miles to be acquired and operated:

8.54 miles.

Related transactions

Three other pleadings are being submitted concurrently with this filing. First, Eighteen Thirty is submitting an individual petition for exemption under 49 U.S.C. §10502 from the requirements of 49 U.S.C. §10904(f) (4) (A). That provision forbids an entity acquiring a rail line under the Offer of Financial Assistance procedures from transferring that line to any entity other than the abandoning carrier from which it was originally purchased [CSXT in this case] prior to the end of the fifth year after consummation of the sale.² CSXT has provided Eighteen Thirty with a letter stating that CSXT will not reacquire the Line and that it waives its rights under the statute. Second, Georges Creek is filing

¹ Petitioner anticipates approval by the bankruptcy Court could take up to 60 days.

² Docketed as STB Docket No. AB-55 (Sub-No. 659X), *CSX Transportation, Inc.- Abandonment Exemption-in Allegany County, MD*.

a Notice of Exemption pursuant to 49 U.S.C. §10901 and 49 CFR 1150.31 covering its operation of the Line. Finally, Duncan Smith and Gerald Altizer, the owners of Eighteen Thirty and Georges Creek, respectively, are filing a Notice of Exemption under 49 CFR 1180.2(d)(2) covering their continuance-in-control of these two entities. That exemption notice has been docketed as STB Finance Docket No. 35436, *Duncan Smith and Gerald Altizer-Continuance-in-Control-Eighteen Thirty Group, LLC, And Georges Creek Railway, LLC*.

Map

49 CFR 1150.33(f)

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification

49 CFR 1150.33(g)

Eighteen Thirty Group certifies that, with this acquisition, its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR 1150.33(h)**

Not applicable. The purchase agreement does not contain any language limiting Eighteen Thirty Group's (or Georges Creek's) ability to interchange with other carriers. Furthermore, the Line only connects with lines of CSXT.

Disclosure of Intent to Transport Waste

Eighteen Thirty Group does not presently intend to provide facilities for the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste (“MSW”) or construction and demolition (“C&D”) material.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10901.

Caption Summary **49 CFR 1150.34**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data **49 CFR 1105**

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b)

(1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:



John D. Heffner

John D. Heffner, PLLC

1750 K Street, N.W.

Suite 200

Washington, D.C. 20006

(202) 296-3333

Counsel for Petitioner

Dated: October 19, 2010

EXHIBIT A

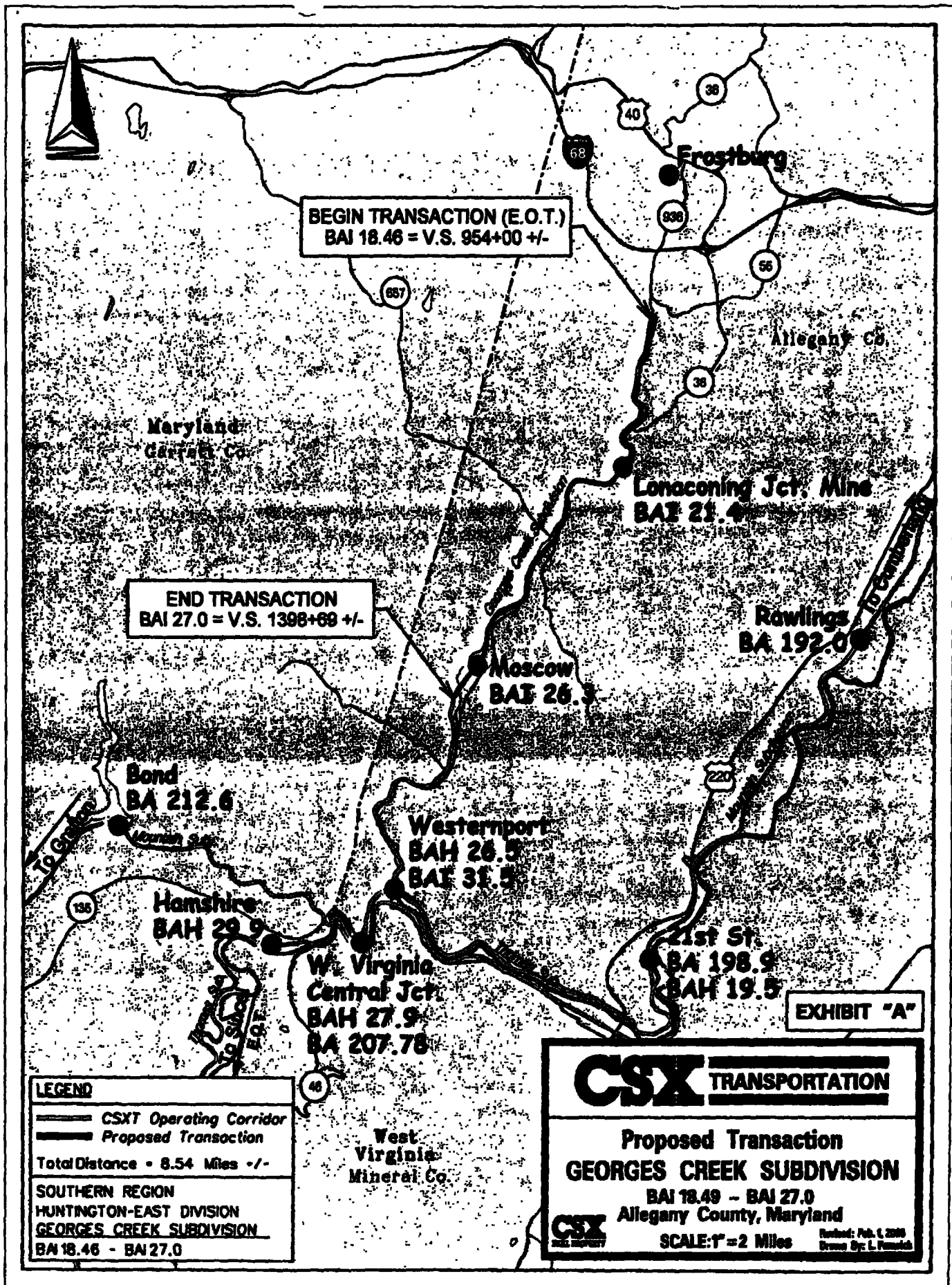


Exhibit B

Certification

I, J. Duncan Smith, certify that I am Manager of Eighteen Thirty Group, LLC and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

I further certify that the foregoing statements made by me are true, and that I am aware that if any of the foregoing statements made by me be willfully false, I am subject to punishment.

Dated: October 15, 2010

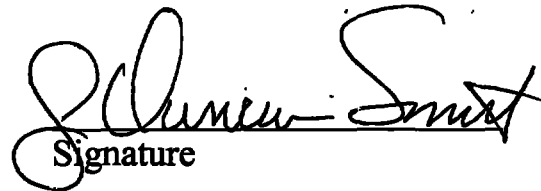

Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO.35438

**EIGHTEEN THIRTY GROUP, LLC
—ACQUISITION EXEMPTION—
LINE OF RAILROAD IN ALLEGANY COUNTY, MD**



Eighteen Thirty Group, LLC (“Eighteen Thirty”), a Maryland limited liability company and noncarrier, has filed a Verified Notice of Exemption under 49 CFR 1150.31 to acquire an 8.54-mile line of railroad between Morrison, MD, milepost BAI 27.0, and Carlos, MD, at the end of the line, milepost BAI 18.46, all in Allegany County, MD (“the Line”).

This proceeding is related to three other proceedings: (1) an individual petition for exemption filed by Eighteen Thirty in Docket No. AB-55 (Sub-no. 659X), *CSX Transportation, Inc.-Abandonment Exemption—in Allegany County, MD*, seeking an exemption from the requirements of 49 U.S.C. §10904(f) (4)(A) forbidding an entity that acquires a rail line under the offer of financial assistance procedures from transferring that line to an entity other than the original abandoning carrier; (2) a Notice of Exemption under 49 CFR 1150.31 filed in STB Finance docket No. 35437 by Georges Creek Railway, LLC (“Georges Creek”) to operate the Line; and (3) a Notice of

Exemption under 49 CFR 1180.2(d)(2) filed in STB Finance Docket No. 35436 by Duncan Smith and Gerald Altizer, the owners of Eighteen Thirty and Georges Creek to continue-in- control of Eighteen Thirty and Georges Creek.

Eighteen Thirty plans to consummate this transaction once the bankruptcy court approves the purchase agreement, at least 30 days from the date of this notice.

Eighteen Thirty certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October __, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Finance Docket No. 35438, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each

pleading must be served on John D. Heffner, Esq., John D. Heffner, PLLC,
1750 K Street, N.W. – Suite 200, Washington, D.C. 20006, Telephone:
(202) 296-3334; and the bankruptcy trustee, Mark J. Friedman, 6225 Smith
Avenue, Baltimore, MD 21209.

Board decisions and notices are available on our website at
WWW.STB.DOT.GOV.

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

VERIFICATION

STATE OF MARYLAND)
)
COUNTY OF BALTIMORE)

SS

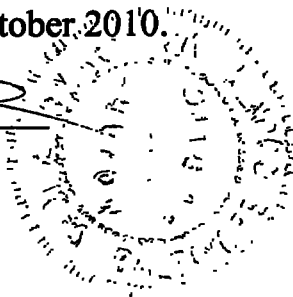
J. Duncan Smith, being duly sworn according to law, hereby deposes and states that he is holds the position of Manager with petitioner, is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true an accurate as stated, to the best of his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the County of Baltimore in the State of Maryland, this 15th day of October 2010.



Notary Public



My commission expires:

CAM E. SMART
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND

My Commission Expires Dec. 1, 2010

ORIGINAL



CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of FD. No. 35436, Duncan Smith and Gerald Altizer – Continuance-in-Control – Eighteen Thirty Group, LLC and Georges Creek Railway, LLC; Finance Docket No. 35437, Georges Creek Railway, LLC – Operation Exemption-Line of Railroad in Allegany County, MD; Finance Docket No. 35438, Eighteen Thirty Group, LLC – Acquisition Exemption-Line of Railroad in Allegany County, MD; Docket No. AB-55 (Sub-No. 659X), CSX Transportation, Inc.- Abandonment Exemption-In Allegany County, MD, Petition For Exemption From 49 U.S.C. 1904(f)(4)(A), dated October 19, 2010, were sent by first-class United States mail, to:

ORIGINAL

Louis Gitomer
Law Office of Louis E. Gitomer LLC
600 Baltimore Avenue
Suite 301
Towson, MD 21204

Mark J. Friedman
6225 Smith Avenue
Baltimore, MD 21209

Charles Spitulnik
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

John R. Wise
Thomas & Libowitz, P.A.
100 Light Street
Suite 1100
Baltimore, MD 21202-1053

James Riffin
1941 Greenspring Drive
Timonium, MD 21093


John D. Heffner

Dated: October 19, 2010